

valuing 2's through 10's as 2 through 10, respectively,
and valuing jacks as 11, queens as 12 and kings as
13.

62. (NEW) The method of claim 57, wherein each of
said players may opt to discard one of said dealt cards
dealt to them and draw a replacement card upon the
payment of a fee, and wherein said dealer can discard a
card and draw a replacement card only if said cards
dealt to said dealer meet a predetermined criteria.

REMARKS

Claims 1-27 have been cancelled and new claims 28-
62 are now pending. Previously, in the last Office
Action before prosecution was continued, claims 1-5,
10, 11, 17-24, 26-28 were rejected under 35 U.S.C. §
102(e) as being anticipated by Srichayaporn, U.S.
Patent No. 6,135,453. Further, claims 7 and 8 were
rejected under 35 U.S.C. §103(a) as being unpatentable
over Srichayaporn and claims 6, 9, 13-16 and 25 were
rejected as being unpatentable over Srichayaporn in
view of Malek, U.S. Patent No. 5,328,189 and Franklin,
U.S. Patent No. 5,597,162.

Additionally, in the Office Action claims 1-5, 7,

8, 10, 11, 17-24 and 26-28 were rejected under 35 U.S.C. §102(b) as being clearly anticipated by Shen et al., U.S. Patent No. 4,659,087. Further, claims 6,9, 13-18 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shen et al. in view of Malek and Franklin.

Finally, claims 1-5, 7-11, 13-20, 22, 23 and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Breeding, U.S. Patent No. 5,248,142. Further, claim 6 was rejected 35 U.S.C. §103(a) as unpatentable over Breeding in view of Malek, claim 21 was rejected under as being unpatentable over Breeding in view of Banyai, U.S. Patent No. 5,810,354, and claims 24 and 25 were rejected as being unpatentable over Breeding in view of Lo, U.S. Patent No. 5,863,042.

Applicant has introduced 35 new claims by amendment. No new matter has been added to the application by this amendment.

The Claims Are Not Anticipated or Made Obvious by Srichayaporn, U.S. Patent No. 6,135,453.

The last Office Action rejected claims 1-5, 10, 11, 17-24, 26-28 under 35 U.S.C. § 102(e) as being

anticipated by Srichayaporn, U.S. Patent No. 6,135,453.

Further, claims 7 and 8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Srichayaporn and claims 6, 9, 13-16 and 25 were rejected as being unpatentable over Srichayaporn in view of Malek, U.S. Patent No. 5,328,189 and Franklin, U.S. Patent No. 5,597,162. Insofar as these rejections apply to the claims as presently amended, Applicant respectfully traverses.

Claims 28-56

Applicant's invention is a game in which both the dealer and each player receives a set of cards and the players and dealer each split their cards into two half-hands. The Applicant's invention, as embodied in both the old and new claims, is readily distinguishable over Srichayaporn, U.S. Pat. No. 6,135,453 ("453 patent" or "'453 game").

Srichayaporn discloses "new" four and seven card versions of traditional Pai Gow poker. In both traditional and the Srichayaporn versions of Pai Gow, the dealt cards are separated into two split playing sets; in the four-card game versions, the cards are divided into two half-hands of two cards (2,2); in the seven-card game versions, the cards are split into

five-card and two-card half-hands (5,2).¹ Each player's split set of cards is played against the dealer's respective sets.² In traditional Pai Gow poker, the player's split sets must both outscore the dealer's split sets in order for the player to win. Note that both split sets do not merely have to "beat" the dealer; they must both "outscore" the dealer.³ The resolution of all bets is dependent on the results of

¹ All of the card games discussed in this amendment involve splitting the initially dealt cards into two sets of varying numbers of cards. These "half-hands" will be identified by an "x,y" designation where x and y are whole numbers. Thus, "3,2" means that the initially dealt cards, after any discarding or buying of replacement cards, are split into two sets, one having three cards and the other having two. As claimed, one of the half-hands is the HIGH hand and the other is the LOW hand. For the majority of this discussion, however, the designation of which particular half-hand is HIGH or LOW is irrelevant.

² Each "new" half-hand is given a distinct title. Traditionally, the titles are "high" and "low" though any other reasonable distinction will work (e.g., "front" and "back"). The designation identifies which of the player's and dealer's half-hands will be compared to one another to determine a winner according to the scoring rules of the game. For example, the player's high half-hand will only be compared to the dealer's high half-hand.

³ One novel aspect of the Applicant's invention is that for the player to win, the HIGH half-hand must be higher than the dealer's HIGH half-hand, but the LOW half-hand must be lower than the dealer's LOW half-hand. Thus the player's LOW half-hand "beats" the dealer's LOW half-hand even though it does not actually outscore it. This scoring aspect is both different and non-obvious when compared to the '453 game and traditional Pai Gow poker.

both split sets of cards.

The betting system in Srichayaporn, however, differs from traditional Pai Gow. In traditional Pai Gow, half-hands are bet on collectively (or as a pair).

In Srichayaporn, individual bets are placed on each half-hand separately; at least two bets are made per hand. Consequently, a person can win on one half-hand and lose on the other. This "dual betting" method of Srichayaporn alters game play and strategy, especially if unequal amounts are wagered on each split set.⁴

Srichayaporn differs considerably from the current invention. First, Srichayaporn only teaches poker based scoring; no other scoring system is contemplated.

The current invention includes and collectively and separately claims poker, blackjack and "straight" numeric scoring.⁵ Additionally, Srichayaporn only

⁴ For example, a player could conceivably bet heavily on one half-hand while betting little or nothing on the other.

A player in a game with 5,2 half-hands might place a much higher bet on the outcome of two-card half-hand and only bet the minimum on the five-card half-hand. Betting this way enables the player to select the best two cards for the two-card half-hand from the seven cards dealt. This strategy enhances odds of winning the two-card half-hand and thereby offset any loss on the five-card half-hand.

⁵ In "straight" numeric scoring aces equal one, twos through tens have their face value, jacks equal eleven,

More than one card

discloses games involving four or seven cards; no other number of cards is described. The current invention can be played with between three and seven cards (and preferably with 6 or 7 cards as defined in claims 57-62, among others). Additionally, the seven-card versions of Srichayaporn and the current invention are significantly different. Srichayaporn only teaches a seven-card game using 5,2 card configuration of split sets. The current invention's seven-card game never employs 5,2 card split sets because (this does not qualify as half-hands) The current invention's seven-card game uses only four possible half-hand combinations. The first is 4,3 half-hands. The second is 3,3 half-hands after a single card is discarded. The third is 3,2 half-hands after two cards are discarded. The fourth is 2,2 half-hands after three cards are discarded.

In the presently claimed invention, "half-hands" are specifically limited in the number of cards they can contain such that the total number of cards in either half-hand does not exceed the total number of cards in the other half-hand by more than one. In

queens equal twelve and kings equal thirteen.

other words, the difference in the number of cards in each half-hand is no greater than one. Thus, no embodiment of the current invention ever involves 5,2, 4,2 or 3,1 half-hands of cards.

Based on the above discussion, there is an obvious and significant difference in game play between the seven-card versions of the current invention (as claimed by, for example, claims and 57-62, among others) and the game taught by Srichayaporn.⁶

Furthermore, unlike the invention claimed by new claims 29-30, 48-56, 60 and 62, Srichayaporn does not teach, suggest or contemplate game play involving the ability to discard or buy new cards. The ability to do so significantly impacts game play and further distinguishes the present invention over Srichayaporn.

In light of the foregoing discussion, the Applicant respectfully submits that Srichayaporn

⁶ For example, in two of the seven-card versions of the current invention the player must contemplate and strategize for a three-card half-hand. In Srichayaporn's seven-card game there is never a three-card half-hand, rather the player must contemplate and strategize for a five-card half-hand (which is equivalent to playing regular five-card poker) and a two-card half-hand. Furthermore, no version of the seven-card versions of the current invention requires the player to contemplate or strategize for a five-card half-hand.

neither anticipates nor makes obvious the current invention as presently new claims. Thus, reconsideration of this grounds for rejection and a Notice of Allowance is respectfully requested.

Claims 57-62

Applicant has also introduced a new claim set, consisting of claims 57-62, directed toward a preferred embodiment of the present invention. As will be apparent from comparing claim 57 to claim 28, claim 57 is limited to games whereby each player are initially dealt 6-7 cards. As discussed above, Srichayaporn discloses a 7 card embodiment, but in Srichayaporn, those 7 cards are then split into two sets with a first set having 2 cards and a second set having 5 cards. This clearly is not a half-hand as presently claimed. Additionally, Srichayaporn discloses a winning scheme whereby both split sets must score higher than the dealer's corresponding split sets. Again, this is contrary to the six and seven card invention as presently claimed. For these reasons alone, claims 57-62 are allowable over Srichayaporn.

The Claims Are Not Obvious in light of Breeding, U.S. Patent No. 5,248,142 and Shen et al., U.S. Patent No.

4, 659,087.

The last Office Action rejected claims 1-5, 7, 8, 10, 11, 17-24 and 26-28 under 35 U.S.C. §102(b) as being anticipated by Shen et al., U.S. Patent No. 4,659,087. Further, claims 6,9, 13-18 and 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over Shen et al. in view of Malek and Franklin.

Additionally, claims 1-5, 7-11, 13-20, 22, 23 and 26-28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Breeding, U.S. Patent No. 5,248,142, while claim 6 was rejected as unpatentable over Breeding in view of Malek, and claim 21 was rejected under as being unpatentable over Breeding in view of Banyai, and claims 24 and 25 were rejected as being unpatentable over Breeding in view of Lo. Insofar as these prior rejections apply to the new claims submitted for examination, Application respectfully traverses.

Previously, the Examiner has asserted both Breeding and Shen as references against the present invention. In general, the Examiner's has asserted that Breeding and Shen both teach the presently claimed invention, albeit with a different "winning scheme."

In reference to Breeding, the January 10, 2001

Office Action stated, "the determination is that choosing a different winning scheme does not change the game. It only changes the strategy and odds in a known and expected way that is within the skill of one practicing the art." The November 15, 2000 Office Action asserts that Applicant's invention is "conventional Asian or Pai Gow poker as shown in Breeding.... The only difference is how the players are declared the winner." The November 15, 2000 Office Action further attempts to explain that one of ordinary skill in the art would be able to change the winning scheme of Breeding to produce the present invention without being "inventive." The August 15, 2000 Office Action states that a "winning scheme is nothing more than a predetermine[d] criteria that must be met by a player in order to [be] considered a winner . . . [and while] a change in design may make the games different, the games may not be patentably distinct."

Breeding discloses a game based only on poker scoring. The present invention is in no way limited to such scoring as the specification makes clear that the invention can utilize poker-based scoring, blackjack scoring and/or straight numeric scoring.

Furthermore, Breeding discloses the traditional

game of Pai Gow poker wherein each of the players is dealt seven cards. The seven cards are then divided by each player into two split sets, one having five cards and the other two cards. This, as described above with respect to Srichayaporn, is clearly not splitting cards into two half-hands and Breeding does not teach or suggest any variation of this dealing and playing methodology. In fact, this methodology is necessitated due to the poker-based scoring method (i.e., one five card poker hand must be generated from the seven dealt cards) used in the game. The claimed invention does not have the players dividing the dealt cards into separate half-hands of five and two cards. As properly defined by examples in the specification and recited in the claims, a half-hand is comprised of essentially equal amount of cards (4 and 3, 3 and 3, 2 and 2, 2 and 3, or 1 and 2). Thus, nowhere does Breeding disclose, teach, or suggest to one of ordinary skill in the art a card based game method whereby two half-hands, with the above combinations of cards in each half-hand, are created by each player and the dealer from an initial deal comprising 3 to 7 cards.

Shen et al., U.S. Pat. No. 4,659,087 ("'087 patent") is also directed toward a Pai Gow type card

game differing substantially only in that Shen uses four cards. The four dealt cards are divided into two split sets of two cards (2,2). The object is to create the two highest value two-card half-hands within the scoring rules. In order for a player to win, both of the player's half-hands must be higher than the dealer's two half-hands. A player loses if both half-hands are lower than the dealer's half-hands. Finally, the hand is a push if a player wins one half-hand and loses the other.

Shen et al. utilizes a modified blackjack scoring system and a poker tie breaker system. Cards are valued and added together according to blackjack rules.

Once added, however, the "tens" digit is ignored for values above nine; only the ones digit is considered. For example, any two cards totaling 18 would equal 8. Thus an 18 would lose to both of a half-hand of a 5 and a 4 (totaling 9) as well as a half-hand of a 10 and a 9 (totaling 19). However, a face card (valued at 10) and a 9 (or an ace and 8) trumps a 5 and a 4 even though both equal 9. Additionally, pairs of cards beat any set of added cards; a pair of 2s beats a King and a 9.

If the dealer and player have the same half-hand, the dealer wins.

Shen et al. and the current invention are dissimilar in several ways. First, the current invention can be played with between three and seven cards. Shen et al. only teaches game play with four cards and does not provide any suggestion to modify its game play. The scoring systems of the games differ as well. First of all, the current invention does not involve ignoring the tens digit of the totaled half-hand values.⁷

With regard to the Examiner's position regarding the "winning strategies" of Breeding and Shen et al., the Applicant respectfully asserts that a "winning scheme" substantially defines and differentiates any game, new or old, and especially card games. As such, changing a card game's winning strategy defines a new game as opposed to merely redefining an old game.

The Examiner's rationale that changing the winning scheme (or strategy) of a card game does not produce a new card game produces anomalous results when applied to current card games. For example, applying this logic means that traditional five-card poker makes

⁷ The scoring systems contemplated by the current invention are poker, blackjack and "straight" numeric scoring.

obvious any other five-card card game; if no new card game can be produced by changing the rules and winning scheme, how can any new, and therefore patentable, five-card game ever be produced using traditional playing cards? The Applicant, therefore, respectfully submits that the "winning scheme" as claimed in the present invention is patentably distinct from that disclosed by Breeding and/or Shen et al.

In order to win in the current invention, the player's lowest hand must be lower than the dealer's lowest hand, and the player's highest hand must be higher than the dealer's highest hand. This winning strategy in conjunction with the half-hand convention regarding the number of cards allowed in each half-hand described above is not taught or made obvious by any art reference cited by the Examiner or discovered by the Applicant.

The current invention's novel winning scheme differs considerably from those taught in Breeding and Shen et al. The winning schemes in Breeding and Shen et al. require both of a player's half-hands to be higher than the dealer's two half-hands. Consequently, in Breeding and Shen et al., the odds of winning

increase as the relative difference between half-hand values decreases; in the current invention the odds of winning increase as the relative difference between half-hand values increases.⁸ Consequently the strategy

⁸ For example, using blackjack scoring and four card hands, the best possible hand in the current invention is ace, ace, king and 2. From these cards the player can make a half-hand of 21 (Ace + King) and a half-hand of 3 (Ace + 2). The difference (Δ) between the two sets is 18. The other combination results in half-hands of 13 and 12 respectively ($\Delta = 1$). The 12 set is not very good as the low set. As can be seen, as Δ increases, the likelihood of winning increases. These same cards in the Shen et al. game can be combined in two ways. First, the cards can produce half-hands equal to 21 and 3. Because the Shen et al. game ignores the tens digit, these scores are actually 3 and 1 ($\Delta = 2$). The other possible half-hands are 12 (King + 2) and 22 (Ace + Ace). Because of the scoring convention, both sets equal 2 ($\Delta = 0$). Both hands are poor for the Shen et al. game because neither has a good chance at being higher than an opposing player's high half-hand. As between the two combinations, however, the half-hands equal to 2 are better because both have a chance of being higher than an opposing player's high half-hand. The 3 and 1 half-hands have less chance of winning because the 1 set is almost always a guaranteed to lose. Note that this analysis does not consider the prudence of intentionally playing for a push or special rules regarding "pairs" of cards being given special value; this analysis only considers a winning strategy for a single hand of the game.

Conversely, the best hand in the Shen et al. game is an ace, 10, 9 and 8. The player can make a combination resulting two half-hands valued at 9 ($\Delta = 0$). The other combinations result in scores of 21 and 17 or 20 and 18. The scoring convention will result in either combination having one very low valued half-hand (either 0 or 1). Note that these alternate combinations have $\Delta = 6$ and 8 respectively after the ignoring the tens digit. In the current invention, the player can either make half-hands of

for winning is completely opposite; half-hands that are very good in present invention tend to be very poor in Breeding and Shen.

Furthermore, Applicant notes that neither Breeding or Shen disclose, teach or suggest the 6-7 card embodiment of the invention as claimed in new claims 57-62. Independent consideration is requested for these claims.

New Claims 34 and 61.

Applicant additionally notes that claims 34 and 61 pertain to a scoring methodology of the invention which has not been affirmatively claimed before.

Specifically, claims 34 and 61 recite "straight" numeric scoring whereby Aces count as 1, cards 2-10 count for their face values, jacks count as 11, queens as 12 and kings as 13. This scoring methodology is neither disclosed, taught or suggested by any of the art of record. Thus, Applicant respectfully submits

21 and 17, 20 and 18 or 19 and 19. Because the goal of the current invention is to get a very high score and a very low score, the best card combination is 21 and 17. Observe that Δ decreases (4, 2 and 0) as half-hand quality decreases. Note also, however, that none of the set combinations are very good for the current invention.

that claims 34 and 61 recite distinct patentable subject matter to which the Applicant is entitled to patent.

Claim Rejections based on Srichayaporn, Breeding
or Shen et al.

Applicant respectfully submits that all previous and future rejections based wholly on Srichayaporn, Breeding or Shen et al. cannot be maintained because of the deficiencies described above. Furthermore, Applicant respectfully submits that addition of secondary references will not cure the deficiencies of Srichayaporn, Breeding or Shen et al. as described above.

CONCLUSION

For foregoing reasons, it is respectfully requested that the above new claims be entered, and that the analysis that accompanied the rejections set forth in the previous Office Actions regarding the now cancelled claims be reconsidered. The Applicant believes all claims are allowable over the art of record, and the application is therefore submitted to

be in condition for immediate allowance. Favorable reconsideration of this application and a timely Notice of Allowance are respectfully requested.

Respectfully submitted,

By: 

Celine Jimenez Crowson
Registration No. 40,357
Kevin G. Shaw
Registration No. 43,110
Attorneys for Applicant
Hogan & Hartson, L.L.P.
555 13th St., N.W.
Washington, DC 20004
Telephone: (202) 637-5703